

CONSTITUTIONAL LAW REPORTER

Arizona Constitution

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Ariz. Const. art. 2, sec. 2.1(A)(5). Victim's rights — Right to refuse an interview, deposition, or other discovery request.

az.2.2.1.a.5.050 The Victim's Bill of Rights give a victim in a criminal proceeding the right to refuse to be deposed in a parallel civil proceeding by the defendant, the defendant's attorney, or an agent of the defendant.

Winterbottom v. Ronan, 227 Ariz. 364, 258 P.3d 182, ¶¶ 2–7 (Ct. App. 2011) (in 2000, Winterbottom pled guilty to attempted molestation of his two step-daughters; step-daughters, through their mother, filed suit against Winterbottom for tort damages and settled for \$2.2 million, which included various execution agreements, but allowed them to execute against one-third of any money Winterbottom might receive in malpractice action against his attorney; in Winterbottom's malpractice action against his attorney, that attorney's attorney sought to depose step-daughters; trial court ordered deposition, and step-daughters brought special action to challenge that ruling; court held that victims were not being deposed by the criminal defendant, his representative, or someone acting on the criminal defendant's behalf, thus VBR did not preclude deposition).

State v. Lee (Franklin), 226 Ariz. 234, 245 P.3d 919, ¶¶ 2, 8–14 (Ct. App. 2011) (question was whether victims in criminal proceeding (for fraudulent schemes and artifices, theft, illegally conducting enterprise, and money laundering) could refuse request of defendants in criminal proceeding for deposition in parallel civil (forfeiture) proceeding; court held victims retained constitutional right to refuse to be deposed by defense in civil proceeding).

Ariz. Const. art. 2, sec. 2.1(C). Victim's rights—Definition of "victim."

az.2.2.1.c.020 The elements of a crime do not necessarily determine whether a person qualifies as a "victim" under the statutory definition of the Victim's Bill of Rights.

State ex rel. Smith v. Reeves (Aguirre), 226 Ariz. 419, 250 P.3d 196, ¶¶ 10–21 (Ct. App. 2011) (court held purpose of leaving scene of accident statute was to require person to remain and render aid when another person is injured or killed, thus person injured or killed is considered a "victim" under the Victim's Bill of Rights).

az.2.2.1.c.110 The rights and duties continue to be enforceable until final disposition of the charges against the defendant, including acquittal or dismissal of the charges, all post-conviction release and relief proceedings, and discharge of all criminal proceedings relating to restitution.

State v. Leonardo (Gannon), 226 Ariz. 593, 250 P.3d 1222, ¶¶ 5–11 (2011) (because trial court placed defendant on probation, and because probation is not a sentence, and because defendant was still on probation, there was no final disposition of charges yet, thus victim was entitled to all rights under Victim's Bill of Rights).

Ariz. Const. art. 2, sec. 8. Right to privacy.

az.2.8.020 Except for cases involving homes, Arizona courts have not yet held Article 2, section 8, grants broader protections against search and seizure than those available under the federal constitution.

State v. Hummons, 227 Ariz. 78, 253 P.3d 275, ¶ 16 (2011) (defendant was walking on street in “disheveled” clothing, but was carrying what appeared to be “very new” weed trimmer and neatly wound extension cord; officer questioned him and he seemed “very cooperative”; officer asked for some identification, and defendant provided his Arizona identification card; officer retained identification card for 5 to 10 minutes while she conducted warrants check and discovered defendant had outstanding misdemeanor arrest warrant; she intended to allow defendant to leave after she told him to take care of warrant, but he became aggravated and started yelling; so she arrested him, and in subsequent search found drugs; defendant asked court to consider matter under Arizona Constitution; court stated, “Because the exclusionary rule is applied no more broadly under our state constitution than it is under the federal constitution outside the home-search context, we decline to do so.”).

az.2.8.080 Arizona law prevents officers from making a warrantless entry into a home in the absence of exigent circumstances or other necessity.

State v. Flores, ___ Ariz. ___, 260 P.3d 309, ¶¶ 14–17 (Ct. App. 2011) (officer went to defendant’s address to issue citation; when defendant came to door, he refused to get his identification; another officer told officer he saw gun in vehicle parked in driveway; when officer asked defendant if he had any weapons on his person, defendant responded, “No, I don’t have any fucking weapons on me; why the fuck would I have any weapons on me”; to explain their concerns, officers showed defendant weapon in vehicle, and defendant said it was toy gun; officers asked if defendant had any weapons in house, to which defendant aggressively retorted, “I have a whole bunch of fucking weapons, don’t you”; when officer asked again for identification, defendant turned and walked quickly toward house, telling officers they were trespassing on his land; when defendant entered house, officers followed intending to arrest defendant for failing to provide identification; court held officers had reason to believe defendant intended to use one of his weapons, therefore exigent circumstances existed, and officers were justified in entering home).

Ariz. Const. art. 2, sec. 10. Double jeopardy.

az.2.10.dj.010 The guarantee against double jeopardy in the Arizona Constitution affords similar protection to that in the United States Constitution, and protects against a second prosecution for the same offense after conviction or acquittal.

State v. Sprang, 227 Ariz. 10, 251 P.3d 389, ¶ 19 (Ct. App. 2011) (defendant was charged with first-degree murder and was convicted of second-degree murder; because two different methods of killing showed planning or at least reflection, evidence showed killing would have been first-degree murder, thus trial court erred in giving instruction on second-degree murder over defendant’s objection; court held defendant could be retried for second-degree murder without violating prohibition against double jeopardy).

Ariz. Const. art. 2, sec. 15. Cruel and unusual punishment.

az.2.15.cu.010 There is nothing in the language of the Arizona Constitution, or in the opinions interpreting that language, to indicate that the Arizona Constitution gives a defendant any greater rights against cruel and unusual punishment than does the United States Constitution.

State v. Kasic, 228 Ariz. 228, 265 P.3d 410, ¶¶ 13 n.5 (Ct. App. 2011) (defendant committed four arsons while juvenile, and four more arsons once he was adult; trial court imposed consecutive sentences totaling 139¾ years, 80½ years of which were for offenses defendant committed while juvenile; court noted longest sentence defendant received for any count was 15¾ years, and held sentence was not disproportional to offense; court noted Arizona Supreme Court has declined to interpret Arizona's prohibition against cruel and unusual punishment to provide protection greater than does Eighth Amendment).

Ariz. Const. art. 2, sec. 22. Bailable offenses.

az.2.22.030 The purposes of bail are (1) to assure the appearance of the accused, (2) to protect against intimidation of witnesses, and (3) to protect the safety of the victim, any other person, and the community; any bail set at an amount greater than necessary to achieve those purposes is excessive within the meaning of the Arizona Constitution and is therefore prohibited.

Costa v. MacKey, 227 Ariz. 565, 261 P.3d 449, ¶¶ 7–10 (Ct. App. 2011) (state charged defendant with two counts of continuous sexual abuse of a child; defendant filed petition for special action challenging trial court's order setting bond at \$75 million cash; court held bond in this amount was excessive).

az.2.22.050 The Arizona Constitution provides a person shall not be bailable if charged with committing a separate felony while admitted to bail; because a person released on their own recognizance is essentially in the same position as a person released on bail, a person who is released on their own recognizance, either while new charges are pending or while participating in a deferred prosecution program, and is then charged with committing a new offense, is not bailable under the Arizona Constitution.

Brewer v. Rees, 228 Ariz. 254, 265 P.3d 436, ¶¶ 5–9 (Ct. App. 2011) (in February 2010, defendant appeared at initial appearance on allegations of two drug offenses, and in March 2010, agreed to participate in deferred prosecution program; in December 2010, state requested trial court to reinstate charges, and in February 2011, state charged defendant with committing two new drug offenses in November 2010; court held trial court properly ruled defendant was not eligible to be released on bail for new offense).

az.2.22.070 There is nothing in the Arizona Constitution that prohibits a cash-only bond.

Costa v. MacKey, 227 Ariz. 565, 261 P.3d 449, ¶ 8 (Ct. App. 2011) (state charged defendant with two counts of continuous sexual abuse of a child; defendant filed petition for special action challenging trial court order setting bond at \$75 million cash; court held nothing precluded trial court from ordering cash-only bond, but held fact that bond was cash-only could be considered in determining whether bond amount was excessive).

Article 3. Separation of powers.

az.3.040 The Arizona Supreme Court has the power to make rules.

Lear v. Fields, 226 Ariz. 226, 245 P.3d 911, ¶ 7 (Ct. App. 2011) (rules of evidence have generally been regarded as procedural in nature).

az.3.050 Because the Arizona Supreme Court has the power to make rules, a statute that conflicts with a rule will be unconstitutional.

Lear v. Fields, 226 Ariz. 226, 245 P.3d 911, ¶¶ 7–22 (Ct. App. 2011) (court held A.R.S. § 12–2203 (Arizona *Daubert*) engulfs and supplants existing rule on expert witness qualifications and testimony and therefore was unconstitutional).

Article 3. Separation of powers — Courts may not usurp the executive.

az.3.ce.060 Although the Arizona Supreme Court exercises jurisdiction over members of the State Bar, this does not make members of the State Bar members of the judiciary, thus members of the State Bar are not precluded from serving as members of the executive branch.

Home v. Rothschild, 227-Ariz. 119, 253 P.3d 1242, ¶¶ 2–3 (2011) (Marshall E. Home brought action to disqualify Jonathan Rothschild as candidate for mayor of Tucson; court rejected Home’s contention that Rothschild’s status as attorney precluded him from running for mayor).

Article 3. Separation of powers — Courts may not usurp the legislature.

az.3.cl.050 Because the criteria for probation eligibility are a substantive matter determined by the legislature, Rules of Criminal Procedure may not directly conflict with statutory directives.

State v. Lewis, 226 Ariz. 124, 244 P.3d 561, ¶10 (2011) (because A.R.S. § 13–901(E) vests trial court with broad discretion to terminate probation, Rule 27.8(c)(2) of the Arizona Rules of Criminal Procedure, which provides trial court could revoke, modify, or continue probation upon violation of probation, could not limit trial court’s power to terminate probation).

Article 3. Separation of powers — Arizona Superior Court may not usurp the Arizona Supreme Court.

az.3.csc.010 The Arizona Supreme Court has the power to make procedural rules, and the Arizona Superior Court does not have the inherent power to grant relief that is contrary to a rule promulgated by the Arizona Supreme Court.

State v. Merolle, 227 Ariz. 51, 251 P.3d 430, ¶¶ 12–15 (Ct. App. 2011) (more than 4 months after grand jury returned indictment, defendant filed motion to dismiss indictment; trial court recognized defendant’s motion was untimely, but held it had inherent power to dismiss and did so; court held defendant’s motion was untimely, which resulted in waiver of any challenge to grand jury proceedings, and further held trial court did not have inherent power to follow procedure that was directly contrary to rule of procedure Arizona Supreme Court had adopted, and thus reversed trial court’s order of dismissal).

Article 3. Separation of powers — Legislature may not usurp the courts.

az.3.lc.060 The legislature may change a statute, and the separation of powers doctrine does not preclude the legislature from overruling or changing a judicial interpretation of a statute and apply it on a retroactive basis.

State v. Montes, 226 Ariz. 194, 245 P.3d 879, ¶¶ 8–19 (2011) (defendant committed his offenses September 11, 2005; because defendant committed his offenses prior to April 24, 2006, and his trial began after that date, trial court required defendant to prove that he acted in self-defense; defendant was convicted and appealed; court affirmed conviction on September 18, 2009, and defendant filed motion for reconsideration, which was pending on September 30, 2009, effective date of Senate Bill 1449; defendant contended Senate Bill 1449 was change in law that entitled him to new trial; court held Senate Bill 1449 was not unconstitutional and thus entitled defendant to new trial).

az.3.lc.080 Because the Arizona Supreme Court has the power to make rules, a statute that conflicts with a rule will be unconstitutional.

Lear v. Fields, 226 Ariz. 226, 245 P.3d 911, ¶¶ 7–22 (Ct. App. 2011) (rules of evidence have generally been regarded as procedural in nature; court held A.R.S. § 12–2203 (Arizona *Daubert*) engulfs and supplants existing rule on expert witness qualifications and testimony and therefore was unconstitutional).

Article 6, section 5(5). Supreme court—Rule-making authority.

az.6.5.5.010 Arizona Supreme Court has the exclusive power to make rules of procedure.

Lear v. Fields, 226 Ariz. 226, 245 P.3d 911, ¶ 7 (Ct. App. 2011) (rules of evidence have generally been regarded as procedural in nature; court held A.R.S. § 12–2203 (Arizona *Daubert*) engulfs and supplants existing rule on expert witness qualifications and testimony and therefore was unconstitutional).

az.6.5.5.050 Because the Arizona Supreme Court has the power to make rules, a statute that conflicts with a rule will be unconstitutional.

Lear v. Fields, 226 Ariz. 226, 245 P.3d 911, ¶¶ 7–22 (Ct. App. 2011) (rules of evidence have generally been regarded as procedural in nature; court held A.R.S. § 12–2203 (Arizona *Daubert*) engulfs and supplants existing rule on expert witness qualifications and testimony and therefore was unconstitutional).

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